REMARKS/ARGUMENTS

The present application has been reviewed in light of the Final Office Action dated November 17, 2010, and in contemplation of the filing of the Request for Continued Examination herewith. Claims 16-36 are currently pending, claims 1-15 having been previously cancelled. By the present Amendment, Applicant has amended claims 16-20, 22-28, and 30-34; and has added claim 36. Applicant respectfully requests early and favorable reconsideration of this application.

Claims 16, 18-23, 27, 30, and 34 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,551,333 to Kuhns et al. (hereinafter "Kuhns"). Applicant respectfully submits that claims 16, 23, and 30, as amended herein, are allowable over Kuhns.

Pursuant to 35 U.S.C. § 102(b), a claim is unpatentable only if each and every element set forth in the claim is found, either expressly or inherently, in a single prior art reference. *See* MPEP 2131; *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Independent claim 16, as amended, presently recites a delivery device for delivering at least one surgical anchor including, *inter alia*, "*a plurality of surgical anchors located within the delivery tube and radially about the anchor carrier*, each surgical anchor having a penetration section and a head section, an actuator having at least two states, the first state causing the anchor carrier to be in its proximal-most position and the second state causing the anchor carrier to be in the distal-most position *with a perimeter of the penetration section of the surgical anchor extending distally beyond the distal end of the delivery tube and being in contact with a target site*." (emphasis added).

As described in the specification, as originally filed, and shown in FIG. 9 below, the anchor has a centered internal channel through which the cylindrical anchor carrier passes. (see Para. 0012). Further, when delivery device 20 is in the fully stroked state, penetration shaft 12 and head 11 of distal-most anchor 10 are urged past flexible reaction members 29 that are fixed with respect to delivery tube 23, such that at least penetration shaft 12 of distal-most anchor 10 is exposed past the distal end 31 of delivery tube 23. (see Para. 0032). As shown below in FIG. 9, the surgical anchor is loaded onto the anchor carrier and the perimeter of the penetration section of the surgical anchor extends distally beyond the distal end of the delivery tube and is in contact with a target site, as cited in claim 16.

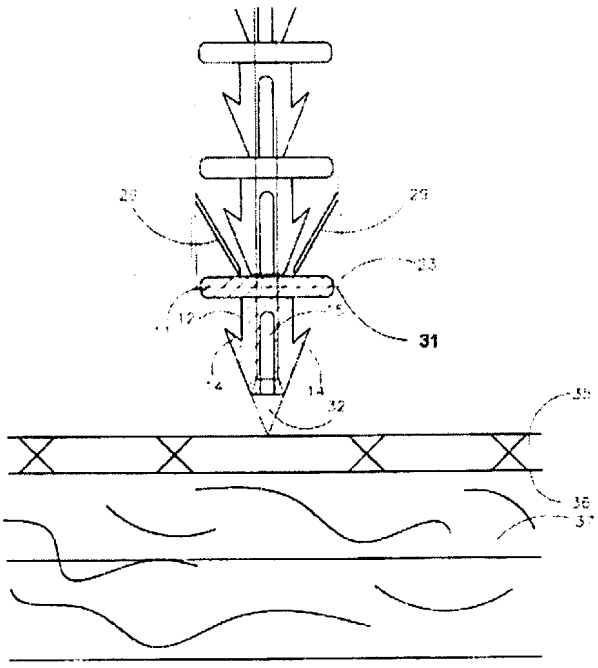

FIG. 9

Rather, Kuhns discloses a device that delivers a fastener to a target site by placing the fastener within a penetrating delivery tube that is within another tube, as seen in FIGS. 14, 15,

19, and 20 below. "First and second sliders 60, 70 may be made sharp by the attachment of penetrating members or first and second stab plates 96, 97 thereon. First and second stab plates 96, 97 can be then attached to the first and second sliders 60, 70 by placing first and second stab plates 96, 97 over first and second stab posts 64a, 74a and then placing the assembled stab plates 96, 97 and first and second sliders 60, 70 into the hollow shaft 92 to form a shaft sub-assembly." (Col. 19, lns. 32-40) (emphasis added). "The partial movement or activation of the trigger 85 can translate or move the first and second sliders 60, 70 distally (downwardly in FIG. 14) from the initial position shown in FIG. 14. As illustrated in FIG. 19, the surgeon has continued to actuate or move the trigger 85, to the first position. [...] *Although shielded from tissue contact by the end effector 95*, the first and second barbs 107, 108 of the distal most fastener 105 are placed within tissue of the inguinal floor 126." (Col. 17, lns. 10-20) (emphasis added).

"In FIG. 20, the first slider 60 has partially moved or retracted into the shaft 92. This action can released [sic] the first and second barbs 107, 108 of the distal most fastener 105 from the constrained condition shown in FIG. 19 and fixably engaged the first barb 107 with the tissue of the inguinal floor 126." (Col. 17, lns. 32-37). Accordingly, the Applicant respectfully submits that the Kuhns discloses a shaft 92 having a penetrating delivery tube consisting of first and second sliders 60, 70 and first and second stab plates 96, 97. As a result, Kuhns device has a portion of the penetrating delivery tube, namely second slider 70 and second stab plate 97, extending distally past the fastener 105 when the actuator is in the second position, as indicated by the Examiner. Therefore, the surgical anchor in Kuhns is not exposed beyond the distal end of the delivery tube in the second state, as recited in claim 16.

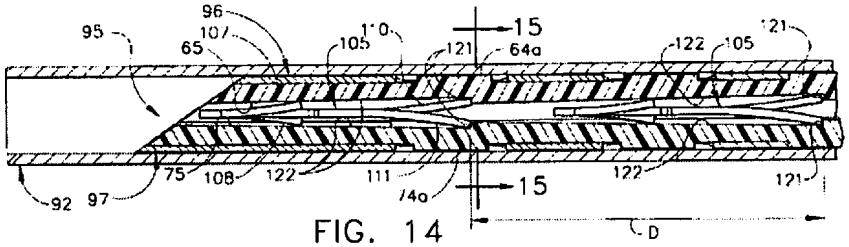

FIG. 14

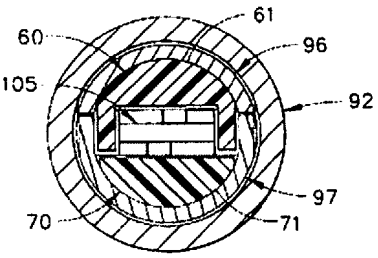

FIG. 15

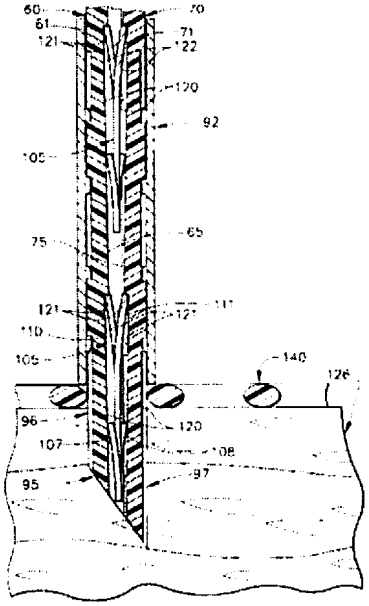

FIG. 19

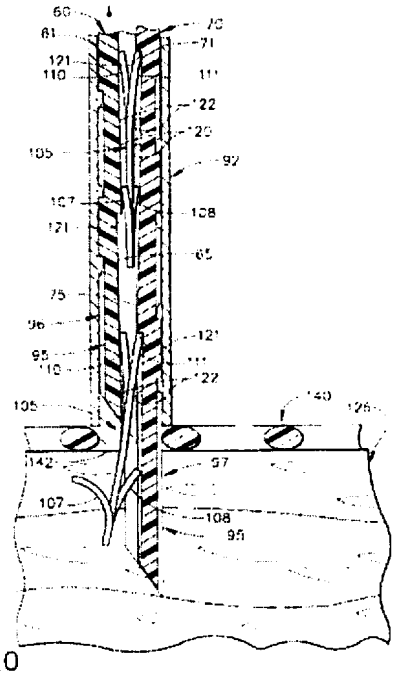

FIG. 20

Accordingly, Kuhns fails to teach each and every feature of claim 16 in that Kuhns fails to teach and/or disclose an actuator being in a second state that causes the anchor carrier to be in the distal-most position with a perimeter of the penetration section of the surgical anchor extending distally beyond the distal end of the delivery tube and being in contact with a target site, as recited in claim 16.

Applicant therefore respectfully submits, in view of the arguments presented above, that independent claim 16 is allowable over Kuhns.

Since claims 18-22 depend, directly or indirectly, from claim 16 and contain all of the features of claim 16, for the reasons presented above regarding the patentability of claim 16, Applicant respectfully submits that each of claims 18-22 is also patentable over Kuhns.

Independent claim 23, as amended, recites a delivery device for delivering at least one surgical anchor including, *inter alia*, "at least two reaction members fixed in respect to the delivery tube, each of the at least two reaction members extending radially inward and distally from the inner surface of the delivery tube."

As described in the specification, as originally filed, and shown in FIG. 9 above, "flexible reaction members 29 that are fixed with respect to delivery tube 23 and penetration shaft 12 [...] counter the insertion force of distal-most anchor 10 so that anchors 10 do not move proximal during insertion." (see Para. 0032).

Rather, Kuhns is devoid of flexible reaction members that are fixed with respect to a delivery tube and a penetration shaft, as seen in FIGS. 14 and 20 above. "First and second legs 110, 111 of the fastener 105," (Col. 13, lns. 28-32), cannot be at least two reaction members as suggested on lines 5 and 6 of page 3 of the Final Office Action by the Examiner. First and second legs 110, 111 of the fastener 105 are not and cannot be fixed with respect to the delivery tube 92, as suggested by the Examiner and required by claim 23, because if the fastener 105 was fixed in respect to the delivery tube, the fastener 105 would not be able to exit the delivery tube 92 and could not be inserted into tissue. Thus, frustrating the purpose of the Kuhns disclosure.

Applicant therefore respectfully submits, in view of the arguments presented above, that independent claim 23 is allowable over Kuhns.

Since claim 27 depends, indirectly, from claim 23 and contains all of the features of claim 23, for the reasons presented above regarding the patentability of claim 23, Applicant respectfully submits that claim 27 is also patentable over Kuhns.

Independent claim 30, as amended, recites a delivery device for delivering at least one surgical anchor including, *inter alia*, "the tissue penetrator member having a proximal shoulder configured to removably retain a plurality of surgical anchors about the anchor carrier."

As described in the specification, as originally filed, and shown in FIG. 9 above, "[a]nchor carrier 26, connected proximally to piston 25, comprises a cylindrical rod terminating distally in tissue penetrator 32. [...] Queing spring 28 is compressed and serves to urge anchors 10 distally against each other and against the proximal shoulder of tissue penetrator 32 that abuts distal end 16 of distal most anchor 10 and provides a counter force against queuing spring 28." (see Para. 0031).

Rather, Kuhns discloses a device that uses steps in a pair of sliders to force or walk the fastener forward between the sliders, as seen in FIGS. 14 below. "It can be the positive contact or engagement of the fasteners 105 with the steps 121 and sliding contact or engagement with the inclines 122 that drives or feeds the plurality of fasteners 105 between the reciprocating first and second sliders 60, 70 and places the fastener 105 in tissue. (Col. 13, lns. 28-32) (emphasis added). As a result, the steps 121 keep the fasteners 105 from traveling distally with a respective slider 60, 70. Accordingly, Kuhns fails to disclose a tissue penetrator member having a proximal shoulder configured to removably retain a surgical anchor about the anchor carrier, as required by claim 30. Therefore, Kuhns fails to teach each and every feature of claim 30.

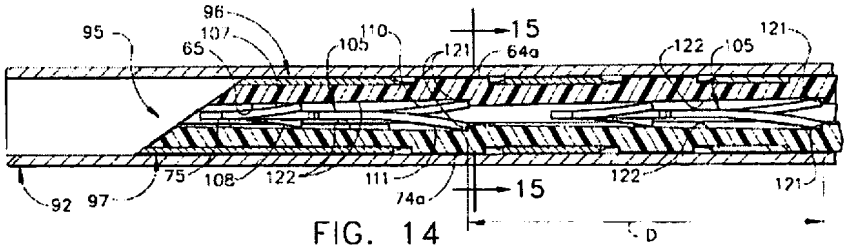

FIG. 14

Applicant therefore respectfully submits, in view of the arguments presented above, that independent claim 30 is allowable over Kuhns.

Since claim 34 depends, indirectly, from claim 30 and contains all of the features of claim 30, for the reasons presented above regarding the patentability of claim 30, Applicant respectfully submits that claim 34 is also patentable over Kuhns.

Claims 23-26, 28-33, and 35 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,551,333 to Stein et al. (hereinafter "Stein"). Applicant respectfully submits that independent claims 23 and 30 are allowable over Stein, because Stein fails to anticipate each and every feature of independent claims 23 and 30.

Independent claims 23 and 30, each presently recites a delivery device for delivering surgical anchors including, *inter alia*, "a reciprocating anchor carrier, with distal and proximal positions and distal and proximal ends, the distal end of the anchor carrier terminating in a tissue penetrator member, the reciprocating anchor carrier being moveable distally and proximally with respect to the delivery device."

As described in the specification, as originally filed, and shown in FIGS. 7 and 8 below, when delivery device 20 is in the fully stroked state, penetration shaft 12 and head 11 of distal-most anchor 10 are urged past flexible reaction members 29, that are fixed with respect to

delivery tube 23, such that at least penetration shaft 12 of distal-most anchor 10 is exposed past the distal end 31 of delivery tube 23. (see Para. 0032).

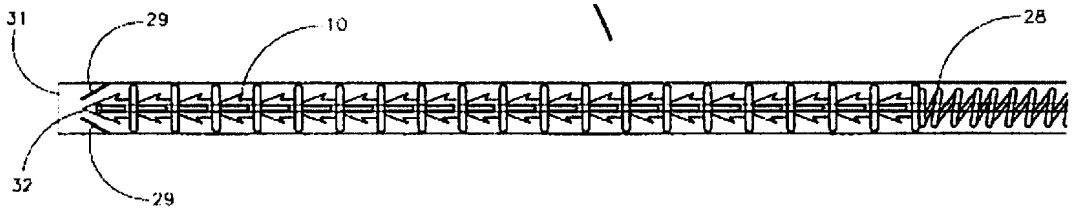

FIG. 7

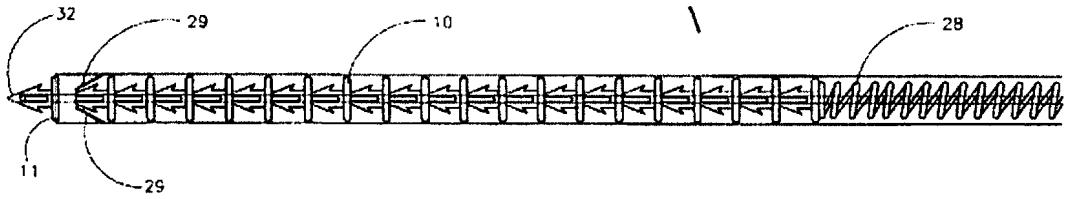

FIG. 8

Rather, Stein discloses a device that has a rotating drive rod, as seen in FIGS. 2-4 and 19 below. "Referring now to FIG. 19, as drive rod 30 is rotated within tubular sleeve 40, drive rod 30 rotates coil fasteners 20 [...] thus, rotation of drive rod 30 rotates or screws a coil fastener out of the distal end of elongated tubular portion 18." (Col. 7, ln. 66 - Col. 8, ln. 5). Accordingly, the drive rod in Stein is rotational and is not reciprocating so as to have a distal and a proximal position, as recited in claims 23 and 30.

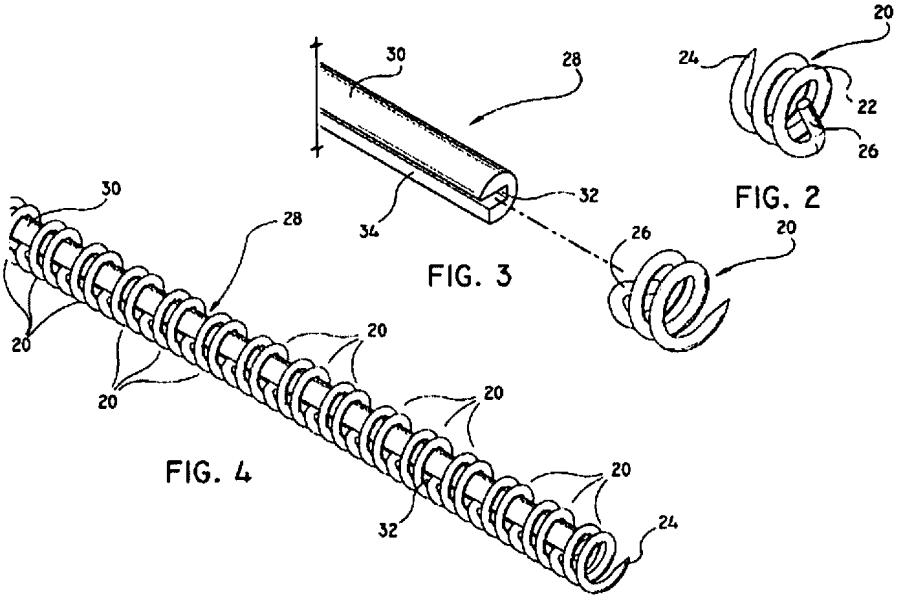

FIG. 2

FIG. 3

FIG. 4

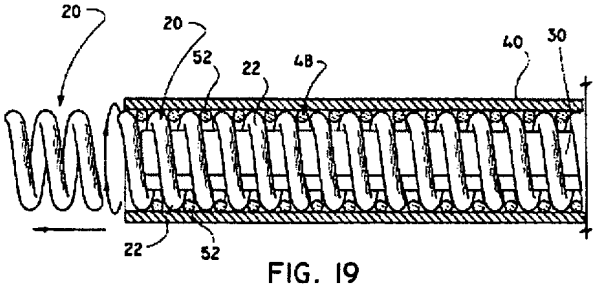

FIG. 19

Accordingly, Stein fails to teach each and every feature of claims 23 and 30 in that Stein fails to teach and/or disclose "a reciprocating anchor carrier, with distal and proximal positions and distal and proximal ends, the distal end of the anchor carrier terminating in a tissue penetrator member, the reciprocating anchor carrier being moveable distally and proximally with respect to the delivery device," as recited in claims 23 and 30.

Applicant therefore respectfully submits, in view of the arguments presented above, that independent claims 23 and 30 are each allowable over Stein.

Since claims 24-26, and 28-29 depend, directly or indirectly, from claim 23 and contain all of the features of claim 23, and claims 31-33, and 35 depend, directly or indirectly, from claim 30 and contain all of the features of claim 30, for the reasons presented above regarding the patentability of claims 23 and 30, Applicant respectfully submits that each of claims 24-26, 28-29, 31-33, and 35 is also patentable over Stein.

Claim 17 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kuhns.

Applicant respectfully submits that since claim 17 depends directly from claim 16 and contains all of the features of claim 16, for the reasons presented above regarding the patentability of claim 16 over Kuhns, Applicant respectfully submits that claim 17 is also patentable over Kuhns.

In view of the remarks and arguments presented above, it is respectfully submitted that each of the rejections raised by the examiner in the present Office Action have been overcome. It is respectfully submitted that none of the references of record, considered individually or in any proper combination with one another, disclose or suggest the present invention as claimed.

Should the Examiner believe that a telephone interview may facilitate prosecution of this application, or resolve any outstanding matters, the Examiner is sincerely invited to contact the Applicant's undersigned representative at the number indicated below.

In view of the foregoing amendments and remarks, reconsideration of the application and allowance of claims 16-36 is earnestly solicited.

Respectfully submitted,

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